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CHAPTER 850. UNEMPLOYMENT COMPENSATION

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**CHAPTER 850. UNEMPLOYMENT COMPENSATION**  
**(To Be Used With FPM, Ch. 850)**

**1. SCOPE**

This chapter sets forth the VA policies and procedures for the administration of the Unemployment Compensation for Federal Employees (UCFE) program authorized by 5 U.S.C. chapter 85. This policy covers all VA employees, including those appointed in the excepted service under title 5 and title 38 authorities, except foreign nationals employed at the VA Regional Office and Outpatient Clinic, Manila, Philippines.

**2. POLICY**

It is the policy of the VA to cooperate fully with the Department of Labor (DOL) and the individual State Employment Security Agencies (SESAs) in the management of the UCFE program and to safeguard, through good management practices, Federal funds expended for this program by implementing procedures to reduce improper unemployment benefit payments. This will be accomplished in each VA field facility and Central Office by establishing effective internal control systems which ensure that employees are notified of their rights and responsibilities related to receipt of unemployment compensation; that accurate, complete and timely wage and separation information is provided to SESAs on former VA employees who apply for benefits; and that State unemployment benefit decisions are appealed when it appears that a SESA misinterpreted the facts or the determination is not in accordance with State law.

**3. AUTHORITIES AND REFERENCES**

- a. 5 U.S.C. chapter 85
- b. 20 CFR 609.
- c. FPM Chapter 850, Unemployment Benefits.
- d. Department of Labor Manual, "Unemployment Compensation for Federal Employees—UCFE Instructions for Federal Agencies."
- e. VA Manual MP-4, Part II, Payment of Salaries
- f. MP-6, Part V, Supplement 2.3, Payroll Operating Procedures

**4. RESPONSIBILITIES**

- a. The Deputy Assistant Secretary for Human Resources Management (DAS for HRM), is responsible for developing agency personnel policies related to the UCFE program and for evaluating the effectiveness of those policies. The director will designate an employee within the Office of Human Resources Management to act as the VA Liaison Officer with the DOL.

b. The Office of Financial Management is responsible for payroll policies related to the UCFE program and for the verification and payment of the charge-back to the agency of the costs of unemployment compensation.

c. All field facility directors are responsible for the overall management of the UCFE program for the employees under their jurisdictions. Such responsibility includes effective cost management through the establishment of internal controls and procedures to ensure that accurate and timely information is provided, appeals are initiated when necessary and employees are made available to serve as witnesses. Facility directors who provide personnel and fiscal support services to other facilities will ensure the timely processing of information in connection with this program and the verification of payments made on behalf of the employees at their facilities and at facilities for which personnel and fiscal support is provided.

d. The Payroll Activity is responsible for establishing procedures to ensure that timely and accurate responses to requests for wage and separation data are provided to SESAs and for coordinating such responses with the personnel office.

e. Human Resources Management Officers (HRMOs) are responsible for developing local policy and procedures, in coordination with the Fiscal Officer, to ensure that employees are promptly and properly informed of their rights and responsibilities with regard to unemployment compensation; that the separation data forwarded to the SESA by the fiscal office are complete and accurate; and that timely appeals are made of the decisions of the SESA, when appropriate.

f. Supervisors are responsible for promptly informing the HRM Office whenever an employee is separating from the facility or is placed in a nonpay status for 7 or more consecutive calendar days. In addition, supervisors are responsible for informing the Human Resources Office of the complete reasons for, and the circumstances of an employee's separation, if relevant to an unemployment compensation claim and if otherwise not provided in the documentation of the separation action, and for participating in the presentation of an agency appeal, including serving as firsthand witnesses at appeals hearings.

## **5. COVERAGE**

a. To be eligible for unemployment compensation, a person must have performed qualifying Federal civilian service and earned sufficient Federal wages in a base period under the applicable State law.

b. For unemployment compensation purposes, certain employment is not considered "Federal service." (See 5 U.S.C. 8501 for the types of service not included.)

c. An individual included under 5 U.S.C. 8501(1)(H) relating to certain interns, student nurses and other student employees of the Federal Government does not perform Federal service for unemployment compensation purposes. This applies also to the 38 interns, residents, students, or trainees attached to any VA medical center, clinic, or laboratory primary for training purposes.

d. Any questions regarding what constitutes Federal service for unemployment compensation purposes shall be referred through channels to the DAS for HRM (051).

## **6. DOL AND STATE INSTRUCTIONS**

a. All VA personnel and payroll offices will maintain a current copy of DOL Manual, "Unemployment Compensation for Federal Employees--UCFE Instructions for Federal Agencies," as well as any additional related bulletins issued by DOL. To the extent that they are applicable to Federal agencies generally, the DOL instructions shall be followed by all VA facilities concerned. Any internal procedures basic to the VA shall continue to be prescribed by the VA and the DOL instructions shall be used as guidelines in implementation of these internal procedures. (See VA Manual MP-4, pt. II, ch. 6, for VA instructions to fiscal offices.)

b. HRMOs will assure that appropriate HRM office staff members and other administrative employees (e.g., payroll officials, concerned supervisors) are scheduled to attend training seminars conducted by DOL, to the maximum extent feasible and necessary to the efficient administration of the UCFE program.

c. Each facility should obtain copies of the State laws and or SESA guidelines and instructions pertaining to unemployment compensation for its employees. In order to assist facilities in understanding the kinds of information needed to accurately complete the wage and separation data essential to the processing of claims for entitlement to unemployment compensation, SESAs will provide, upon request, interpretations and explanations of their laws.

## **7. STATEMENT TO ALL NEWLY HIRED AND REHIRED EMPLOYEES**

a. The HRM Office, on the date of appointment, shall provide in duplicate to each newly hired and rehired employee the following statement: "If you have applied for or been receiving Unemployment Insurance benefit payments, it is your responsibility, under penalty of law, to notify the appropriate local office, in writing, to discontinue the issuance of Unemployment Insurance checks now that you are employed. Failure to notify the State agency can result in a penalty such as a fine, imprisonment, or both."

b. The employee will acknowledge receipt by signing and dating the duplicate. The signed and dated duplicate will be filed as a temporary record in the official personnel folder (OPF).

## **8. FURNISHING STANDARD FORM 8 TO EMPLOYEES**

a. Each facility's local policy should include procedures to ensure that the HRM Office is informed as soon as it is known that an employee will be in nonpay status for 7 or more consecutive calendar days. (In accordance with procedures prescribed in FPM Supp. 296-33, subch. 15, leave without pay in excess of 30 consecutive days shall be documented on SF 52, Request for Personnel Action, and forwarded to the HRM Office.)

b. The HRM Office is responsible for furnishing a completed SF 8, Notice to Federal Employees About Unemployment Insurance, to an employee in cases of separation for any reason, transfer to another station or agency, or nonpay status for 7 or more consecutive calendar days, on or before the last day of active duty. (An SF 8 will be provided to an intermittent employee on the first occasion he/she is in a non-pay status; additional SF 8's need not be provided for subsequent

periods of non-pay status, as long as the employee's payroll office remains the same.) The SF 8 should be handed to the separating employee on or before his/her last day of employment. If the employee is not available for personal delivery of the SF 8, it must be mailed to the employee's latest address of record on or before the effective date of the separation or other non-pay action. In addition, the HRM Office has the responsibility of explaining the purpose of the SF 8 to the separating employee and instructing him/her to take the SF 8 to the local State employment office if he/she files a UCFE claim for unemployment benefits, as it will help expedite the claim.

c. The SF 8 will reflect the complete address, including the agency name; i.e., VA, the mail routing symbol of the payroll office maintaining the former employee's records, the name and telephone number of the person to contact at the facility for additional information, and the VA's three-digit Federal Identification Code (FIC), which is (735). This information will ensure that the SESA requests information from the appropriate facility and will assist the facility in making a timely response to the SESA.

d. Notation that the SF 8 was issued to the employee shall be made on the SF 52 by the HRM Office. In those instances when the SF 52 is not required, the HRM Office will establish another means of documenting the issuance of the SF 8.

## **9. FURNISHING INFORMATION TO THE SESA**

a. General personnel records, including the OPF, are maintained for title 5 employees in the Office of Personnel Management's (OPM) Privacy Act System of Records: General Personnel Records (OPM/Govt-1); System Manager: Assistant Director for Workforce Information, Compliance and Investigations Group, OPM; and for title 38 employees in the VA's Privacy Act system of records: General Personnel Records (title 38)-VA (76VA05); System Manager: Deputy Assistant Secretary for Human Resources Management (05), VA. Pay records for all VA employees are maintained in the VA's Privacy Act system of records: Personnel and Accounting Pay System-VA (27VA047); System Manager: Office of the Assistant Secretary for Management (004), VA. Included in these records is the wage and separation information needed to process UCFE claims. Routine use of these records includes disclosure of wage and separation information to the SESA's for adjudication of claims.

b. The payroll activity shall furnish information to the SESA on Form ES-931, Request for Wage and Separation Information UCFE, within 4 workdays from the date of receipt of the Form ES-931 by the agency. In order to ensure that a complete explanation of the reasons for nonpay status, termination of service, or exclusion from unemployment compensation coverage is provided, the Human Resources office will annotate the payroll copy of the SF-52 Personnel Action Code Sheet, with the remark "Check with personnel office if Form ES-931 is received" in any case where the reason for separation or nonpay status, as documented, may not be complete or adequate for UCFE eligibility determination purposes or when the employee's coverage is questionable. As an additional control, all completed Form ES-931s will be concurred in by the HRM office prior to transmittal to the SESA. The payroll activity and the human resources office shall develop local procedures to ensure that the Form ES-931 is accurately completed within the prescribed time limits.

c. If, for any reason, the 4-workday time limit cannot be met, the SESA should be notified immediately as to the cause(s) for the delay and provided with the date by which the completed Form ES-931 will be returned.

d. Since a Federal agency's reported reason for terminating the employee is not final and binding on State agencies in determining the eligibility of a claimant to receive UCFE benefits, it is important that facilities adhere to the requirements of FPM Supplement 296-33 in completing SF 50-B, Notification of Personnel Action, as to "Nature of Action" and separation "Remarks." These items of information are required to be posted, in their entirety, on Form ES-931. If the two items regarding the nature of the personnel action and complete facts related to the separation are not fully and clearly recorded on Form ES-931, the deficiencies may cause the SESA to make a determination of claimant eligibility or ineligibility to receive UCFE benefits which would have been different if all relevant facts had been provided initially.

e. When an employee has been removed for cause, the document(s) supporting the action, including the letter of charges and the decision letter, should be attached to the Form ES-931 by the Human Resources office prior to submission to the SESA. (See FPM Ch. 850, subch. 2-3e, for information regarding employees separated from temporary, probationary or other appointments under which the employee has no appeal rights)

f. If an employee is separated as a result of an "expiration of appointment" or "job abolishment," and the facility made a specific job offer to the employee which the employee refused, this information will be provided to the SESA as part of the separation information on Form ES-931. A brief description of the former job along with a brief description of the job offer including a comparison of salaries should be provided. The SESA has the responsibility of determining whether or not the job offer is "suitable." If a job offer is made subsequent to the return of the Form ES-931, the facility is required to notify the SESA, in writing, and include all pertinent information. All SESAs will deny UCFE benefits to claimants who receive a "suitable" job offer and refuse the offer.

g. A prerequisite for an individual to be covered by the stay-in-school program is that he/she must be a bona fide student employed by a Federal agency. A bona fide student is one who is substantially attending school on a full-time basis. (See 5 CFR 308.101) If the student drops out of school, he/she can no longer be considered enrolled in the program and Federal Employment should be terminated by the Federal agency. Most students who drop out of the program are not entitled to UCFE benefits. However, some States' laws may permit UCFE benefits to be paid following such termination of Federal service if the student had a "compelling" reason for dropping out of school. Therefore, the complete reason for termination must be included on the Form ES-931 so that the SESA can make a proper determination of a student's UCFE eligibility in accordance with State law.

h. The SESA shall be advised whenever an applicant for unemployment compensation is known to have:

(1) Appealed within the agency or to the Merit Systems Protection Board (MSPB), the separation or non-pay personnel action, or

(2) Filed a claim with the Office of Workers' Compensation Programs (OWCP).

i. The HRM office will inform the fiscal office regarding the filing of appeals of claims, as described above, when it is known that an application for unemployment compensation is pending or upon request from the fiscal activity. With regard to appeals of personnel actions, either within the agency or to the MSPB, information regarding the final disposition of the appeal will be furnished by the personnel office to the SESA and an information copy to the fiscal office. The OWCP will inform the SESA directly of final determinations on claims for injury compensation.

## **10. RECONSIDERATION OF FEDERAL FINDINGS**

a. Definition. the employing Federal agency findings for UCFE purposes include the following:

(1) Whether or not the Federal employee has performed Federal service (as defined for UCFE purposes),

(2) The periods of Federal services,

(3) The amount of Federal wages, and

(4) The reasons for termination of Federal service.

b. Processing. If additional information is required by the SESA, or if a claimant disagrees with the information provided by the facility, the SESA will send the facility a Form ES-934, Request for Additional Information or Reconsideration of Federal Findings--UCFE. Upon receipt of Form ES-934, the fiscal office will review the information previously provided to the SESA. The personnel office shall be requested to provide the additional information to the fiscal office for timely submission to the SESA, if this review reveals that:

(1) No mistake has been made in executing Form ES-931, and

(2) The request relates to the reason for separation, or

(3) A question is raised of whether the employment was "Federal service" for unemployment compensation coverage.

c. Statement From Official Records. In cases of reconsideration by or appeal to a SESA involving reason for separation or questions of coverage, the personnel office shall prepare a statement from the SF 50B, the SF-52, or any other official records, for use in releasing information to the SESA. The facility shall furnish any relevant information from official records which it is not otherwise prohibited by law from releasing, shall correct any errors or omissions, shall reverse, modify, or affirm its findings and shall inform the SESA of its actions and the basis thereof.



**11. APPEALS AND HEARINGS**

a. General. Both the former employee and the employing facility have the right to appeal a decision of the SESA which appears to be incorrect in accordance with law or with which there is a disagreement. All SESAs send a notice of determination, if there is an issue, to the separating employee and the separating agency. The notice contains instructions as to how and when to file an appeal. Such notices are sent by the SESA to the Federal agency address as indicated on the SF 8. The Human Resources Office is responsible for reviewing the claimant's files, with regard to the points indicated in subparagraph b below, and determining if an appeal should be initiated. Therefore, the payroll activity will provide a copy of all determinations received to the HRM office within 1 workday after receipt so that, when the case warrants, an appeal can be filed within the allowable time. The payroll activity will also send the human resources office any notice of hearing when the claimant files an appeal, within 1 workday after receipt. In all cases when a hearing is to be held, the HRM office will coordinate the agency's response and appearance with the Regional Counsel (Office of General Counsel designee for Central Office) to determine appropriate representation. The HRM office will notify the payroll activity of the final determination on any appeal.

b. Agency Appeals. When the facility receives a notice of a hearing in any appeal which it has initiated, the HRM office will develop the agency's position and arguments with reference to:

- (1) Any challenge of the VA's finding of fact, or
- (2) Apparent SESA misinterpretation of the VA's findings, or

(3) Prima facie evidence that the determination is not in accordance with the provisions of the State law. Usually the representative at a hearing will be the HRMO, unless the facility Director elects to designate otherwise, or unless the points at issue are such that the Regional Counsel (General Counsel in Central Office) has specifically requested to appear and present the facility's argument with respect to the points at issue. In all cases, the agency's argument and representation will be coordinated with the Regional Counsel (General Counsel for Central Office cases).

c. Employee Appeals. When a VA facility receives a notice of a hearing, the HRM office shall review the notice to determine whether the appeal involves any of the points specified in subparagraph b above. If the appeal involves any such point, the VA representative shall appear and present arguments. While the personnel office will usually prepare the response to the appeal, the Regional Counsel will be consulted.

d. Use of Witnesses. When a facility participates in an appeal hearing, it is the facility's responsibility to provide complete, factual information concerning the reason for separation to ensure that only those employees who meet the appropriate State laws are paid UCFE benefits. This will include having a well-documented case and ensuring that a witness, or witnesses, having firsthand knowledge of the reason for separation, furlough or other nonpay status attends the appeal hearing to present evidence and testimony. Management and supervisory officials will participate as witnesses in these hearings, if requested by the agency representative.

e. Modification of Finding. If an appeal involves a point upon which the facility is able to furnish additional information or with respect to which it wishes to modify its findings, the facility shall furnish the additional or modified findings in writing to the SESA.

f. Advice From the DOL. The DOL will advise any Federal agency on any appeal case. Therefore, if the facility representative feels such advice would be helpful in processing an appeal, the HRM office should contact the Customer Advisory and Consulting Group (051), Office of Human Resources Management in VA Central Office for evaluation and response.

## **12. REPORTS**

Matching programs, which compare VA employment records (Personnel and Accounting Integrated Data) with benefit data received from each SESA, will be processed quarterly by the Austin Financial Services Center. Reports of matched records are sent to each facility quarterly. Facility Directors are responsible for certifying that all unemployment insurance payments shown on the report have been reviewed and verified, with discrepancies noted, in accordance with the instructions issued by the Office of Financial Management. In the case of a discrepancy, the facility will contact the appropriate SESA for a determination regarding the validity of the claim and/or establishment of an overpayment. Upon receipt of a response from the SESA, a followup report will be submitted. Reporting instructions are issued by the Office of Financial Management on the requiring directive for RCS 04-0653.